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UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D.C.

U.S. FOREIGN
INTELLIGENCE
SURVEILLANCE COURT

20 OCT 31 PM 5:11

LEEANN FLYNN HALL
CLERK OF COURT
UNDER SEAL

GOVERNMENT'S EX PARTE REQUEST FOR ISSUANCE OF NOTICES ~~(S)~~

THE UNITED STATES OF AMERICA, through the undersigned Department of Justice attorney, respectfully requests the Court to issue the notices attached hereto. These notices inform certain electronic communication services providers that have received directives pursuant to 50 U.S.C. § 1881a(h) of the Foreign Intelligence Surveillance Act of 1978, as amended (FISA or "the Act"), that the Government's acquisition of foreign intelligence information under such directives may continue while this Court reviews amendments to the [REDACTED] above-captioned certifications.

~~(S//OC/NF)~~

1. On October 3, 2011, this Court issued a Memorandum Opinion and Order concerning the following matters: (1) the "Government's Ex Parte Submission of Reauthorization Certification and Related Procedures, Ex Parte Submission of

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Classified by: Lisa O. Monaco, Assistant Attorney General, NSD, DOJ
Reason: 1.4(c)
Declassify on: 31 October 2036

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Amended Certifications, and Request for an Order Approving Such Certification and Amended Certifications" for DNI/AG 702(g) Certifications [REDACTED]

which was filed on April 20, 2011; [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (S//OC/NF)

2. The Court's Order granted in part and denied in part the Government's request for the Court to approve DNI/AG 702(g) Certifications [REDACTED]

[REDACTED] See Order at 2. In particular, the Court found that the certifications contained all of the required elements. See *id.* at 2-3. The Court further found that with respect to the acquisition of discrete Internet communications from Internet service providers [REDACTED]

[REDACTED] the targeting and minimization procedures were consistent with the requirements of the Act and the Fourth Amendment to the Constitution of the United States. See *id.* at 3. However, in the context of the National Security Agency's (NSA)

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upstream collection,¹ with respect to the acquisition of certain Internet transactions featuring multiple, discrete communications, the Court found that NSA's minimization procedures did not meet the Act's definition of minimization procedures, and that NSA's targeting and minimization procedures were not consistent with the Fourth Amendment to the Constitution of the United States. See Order at 3. ~~(TS//SI//OC/NF)~~

3. On October 4, 2011, the Government respectfully requested, and the Court issued, secondary orders reflecting the Court's approval in part, as described in the Court's Memorandum Opinion and Order of October 3, 2011, to the electronic communication service providers who provide the Government with information, facilities, or assistance necessary to accomplish PRISM collection. [REDACTED]

[REDACTED] These secondary orders specified that, with respect to the acquisitions conducted with the assistance of these providers, the Court's October 3, 2011, Order found that the certifications contained all of the required elements and that the targeting and minimization procedures submitted with those certifications were consistent with the Act and the Fourth Amendment. ~~(S//OC/NF)~~

¹ Pursuant to its Section 702 authorities, NSA collects information from facilities (such as e-mail accounts) in two ways: through PRISM collection, with the assistance of Internet Service Providers [REDACTED] or by selecting for acquisition communications to, from, or about those facilities that are [REDACTED]

This second method of collection is referred to as NSA's "upstream" collection of communications. ~~(TS//SI//NF)~~

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4. On October 5, 2011, the Government respectfully requested, and the Court issued, secondary orders reflecting the Court's approval in part, as described in the Court's Memorandum Opinion and Order of October 3, 2011, to the electronic communication service providers who provide the Government with information, facilities, or assistance necessary to accomplish NSA's upstream collection. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] These secondary orders specified that the Government could continue to acquire foreign intelligence information with the assistance of these electronic communication service providers during the time period that the Government was electing to either correct the deficiencies identified by the Court in its October 3, 2011, Opinion and Order within 30 days, or cease implementation of the certifications insofar as they permit the acquisition of certain Internet communications. ~~(TS//SI//OC/NF)~~

5. On October 31, 2011, the Attorney General, in consultation with the Director of National Intelligence (DNI), adopted amended NSA minimization procedures for use with DNI/AG 702(g) Certifications [REDACTED] On October 31, 2011, the Attorney General and DNI amended DNI/AG 702(g) Certifications [REDACTED] [REDACTED] to permit the use of the revised NSA minimization procedures under those certifications. The amendments to DNI/AG 702(g) Certifications [REDACTED]

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████████ along with the amended NSA minimization procedures, were submitted to the Court on October 31, 2011, and became effective immediately. ~~(S//OC/NF)~~

6. Pursuant to 50 U.S.C. § 1881a(i)(1)(B), this Court has 30 days from the date of submission of a certification to review, and issue an order concerning, the certification and the targeting and minimization procedures submitted therewith. Because the amended certifications, with amended NSA minimization procedures, were submitted to the Court on October 31, 2011, the Court will have until November 30, 2011, to complete its review, and issue an order, concerning the amendments to DNI/AG 702(g) Certifications ██████████ and the amended NSA minimization procedures. This time period extends beyond November 2, 2011, the date specified in the Court's October 5, 2011, secondary orders to the electronic communications service providers assisting NSA in conducting upstream collections. Accordingly, the Government respectfully requests that the Court issue the notices attached hereto, which inform such providers that the Government may continue to acquire Internet communications with the assistance of such providers until the Court issues an order

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